

REMARKS

Claims 11-16 and 24-36 are pending.

I. Claim Amendments

Applicant hereby cancels claims 1-10 and 17-23 without prejudice or disclaimer. Applicant expressly reserves the right to file claims directed to the the subject matter of the cancelled claims in one or more divisional applications.

Claim 11 is hereby amended to presently recite electrostatic properties. In particular, claim 11 describes the film having a surface resistivity of less than 1×10^{11} ohms per square and/or a charge density of less than 3.5 seconds, resulting from particular ratios selected for the olefinic base resin, the antistatic agent and the filler. This characteristic is described in the present specification on pages 33-36. Such properties produce films which may be used in hazardous locations.

Claim 25 recites the "non-flammability" characteristic of the film in a different manner. Specifically, "proportions [of the olefinic base resin, the antistatic agent and filler] are selected such that said film passes a discharge incendivity test." Such discharge incendivity test is described in detail in the present specification beginning on page 33, line 11. Materials which do not produce flammable gasses as a result of the test are considered to have passed the discharge incendivity test. Additionally, please find attached (Attachment II) a paper titled "Electrostatic Testing of Flexible Intermediate Bulk Container", dated May 31, 2001, as a description of another method of determining incendivity of electrostatic discharges. See specifically, "4. TEST METHOD", beginning at page 4. Accordingly, Applicants respectfully submit, from the description in the present specification, one of ordinary skill in the art would know the meaning of "such that said film passes a discharge incendivity test."

Additionally, Claims 26-33 have been added to further distinguish the present invention from the cited reference. New claims 26-30 are simply copies of claims 12-16, but depend from new claim 25, rather than claim 11. Claims 31-36 are particularly directed to a product transfer apparatus incorporating the films of claims 11 and 25. Such product transfer apparatuses are described throughout the specification. See, e.g. page 14, line 8 - page 15, line 19. Applicants respectfully present that while the cited reference discloses various films, no teaching of components of the claimed product transfer apparatus are found therein.

II. 35 USC § 102/§ 103

Claims 11-16 stand rejected under 35 USC § 102(e) as being anticipated by, or in the alternative, under 35 USC § 103(a) as being obvious over Hayes (U.S. Patent No. 6,210,764). The Office Action asserts Hayes discloses, or renders obvious, each feature of the pending claims.

However, Applicants respectfully submit that Hayes does neither teach, nor disclose, each feature of present independent claims 11 and 25. In particular, as amended, claim 11 presently recites that particular ratios selected for each of the olefinic resin, the antistatic agent and the filler with resin produce a film having a surface resistivity of less than 1×10^{11} ohms per square and/or a charge decay of less than 3.5 seconds. The invention lies in the particular selection of the proportions for the individual components, such that the film exhibits the claimed characteristics of either claims 11 or 25. While Hayes may disclose films made of some of the components as claimed herein, it provides no teaching of the proportions set forth in the claims to produce the particular electrical surface resistivity and/or charge decay properties as presently claimed.

Moreover, it must be noted that the films of Hayes contain materials chosen due to their classification as anti-blocking agents. While the laundry list of potential anti-blocking agents may literally encompass the particularly claimed antistatic agents claimed herein, there is no motivation to select the claimed antistatic agents from among the anti-blocking agents. Therefore, while Hayes may indirectly recognize that the claimed antistatic agents are useful in

films of this type (as anti-blocking agents), Hayes does neither disclose nor suggest utilizing the claimed antistatic agents to solve problems associated with electrostatic charge build-up. Only when the particular proportions of elements, as presently claimed, are selected, can the resulting flexible thermoplastic, disposable transfer container exhibit the desired properties, such that the use of the antistatic agents, as compared to simply anti-blocking agents, “results in very low static discharge dissipation times, which is essential to the prevention of incendiary discharges as the transfer container is filled with powder in hazardous conditions” (Specification, page 35, lines 10-12).

Accordingly, Applicants respectfully submit that even if the particular solution invented by Applicants is an obvious combination of known elements, once the problem is discovered, the discovery of a problem or its source must be considered when measuring obviousness under 35 USC §103. See In re Peehs, 612 F.2d 1287, 204 USPQ 835 (CCPA 1980) and In re Zuko, 11 F.3d 887, 42 USPQ2d 1476 (Fed. Cir. 1997).

In any event, with respect to present claims 15, 16, 29 and 30, Applicants respectfully submit that Hayes does not disclose nor suggest selecting N,N-bis(2-hydroxyethyl)dodecaneamide and POE(2) C13-C15 alkylamine as components. While Hayes may teach generally, including a fatty amide and other components optionally in one or more outer layer, there is no motivation to select either N,N-bis(2-hydroxyethyl)dodecaneamide and/or POE(2) C13-C15 alkylamine to provide antistatic properties.

III. Conclusion

In view of the above, it is respectfully submitted that all objections and/or rejections are overcome. Thus, a Notice of Allowance is respectfully requested.

Respectfully submitted,



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THE APPLICANT HEREWITH PETITIONS
THE PTO TO EXTEND THE TIME FOR
RESPONSE AS REQUIRED TO MAKE THE
ATTACHED DOCUMENT TIMELY FILED.
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TO DEPOSIT ACCOUNT 19-4375

STEVEN DAVIS MILLER & MOSHER, L.L.P.

ATTACHMENT I- Marked-Up Claims

11. (Amended) A transfer apparatus including a film, said film comprising an olefinic base resin in a greatest proportion, an antistatic agent in a lesser portion, and a filler [with a resin] in a least proportion, wherein said film has a surface resistivity of less than 1×10^{11} ohms per square and/or a charge density of less than 3.5 seconds.